

REMARKS

The Office Action

Claims 31-34 and 36-48 are pending. Claims 31-41 and 49 stand rejected for obviousness over Kornena et al. (RU 2099974; hereafter “Kornena”) in view of GB 1,171,068 (hereafter “GB ‘068”). Claims 42-44 and 47-48 stand rejected for obviousness over Kornena and D’Agostino et al. (WO 99/07231; hereafter “D’Agostino”). Claims 44-46 stand rejected for obviousness over Kornena and Southwick et al. (U.S. Patent No. 5,985,979; hereafter “Southwick”)

Clarification of the Action

In response to the undersigned’s voice message to the Examiner, the Examiner has indicated that the rejection of claims 35 and 49 for obviousness are in error, as these claims have been cancelled. The Examiner also confirmed that the rejection of claims 42-44 and 47-48 is over the combination of Kornena and D’Agostino, and the rejection of claims 44-46 is over the combination of Kornena and Southwick.

Amendments to the Claims

Claim 31 has been amended to exclude milk explicitly from the list of pre-mix to be emulsified according the method of this invention. No new matter has been added. Furthermore, no new search is necessary.

Rejections under 35 U.S.C. § 103

Rejections over Kornena and GB ‘068

The rejections stand as per the reasons set forth in the previous Office Action paragraphs 3-10. Although claim 31 was amended to disclaim milk in the reply filed on February 12, 2009, claim 31 has been further amended in reply to the rejections to emphasize this disclaimer.

Kornena teaches a method for producing mayonnaise from dry milk (example 1).

GB ‘068 teaches a method for treating a dispersion, such as beer or milk, to pasteurize, sterilize, or stabilize it. As is well-known in the art and acknowledge by the Office, beer is not

an emulsion, therefore the beer embodiment of GB '068 is not even remotely related to the subject matter of amended claim 31.

Since milk no longer forms part of the subject matter of amended claim 31 since the amendment filed on February 12, 2009, the milk embodiment of GB '068 is also not related to the claimed invention.

Thus, neither Kornena nor GB '068 contemplates emulsification of a pre-mix of immiscible liquids as defined in claim 31. Their combination therefore cannot result in suggesting the subject matter of amended claim 31 in an obvious manner to the skilled person.

Applicants respectfully repeat that *In re Aller* is not relevant to the obviousness of claim 31, since the variables to be optimized are not art recognized as being result-effective. In particular, Kornena does not employ flow; therefore, there is no reason from this reference for the skilled person to optimize the liquid flowing rate through the magnetic field. GB '068 does not discuss the size of micelles in any context, much less the parameters to be varied to achieve a particular result; therefore, there is no reason for the skilled person to optimize the magnetic field strength. Thus, the art of record does not identify flow and/or magnetic field strength as result-effective variables for emulsification, and the ranges for these variables in claim 31 would not have been discovered by routine experimentation.

The Office has responded to these arguments, stating:

It is recognized energy input is necessary to emulsify and increase the number of circulation (increase the number of cascade vessels taught by GB '068) and/or slow down flow rate will increase residence time and hence total energy supplied.
(paragraph 8)

There is no support in the record for this position. If the Office intends to take official notice of the need for increased energy in preparation of emulsions by increasing circulation or decreased flow rate, Applicants request documentary evidence to support the Office's position under M.P.E.P. § 2144.03. In particular, Applicants have noted that the only reference directed to emulsification cited by the Office does not teach flow, so there can be no "common knowledge" of the need for increasing time of flow or reducing the speed of flow in emulsification.

In addition, the Office has suggested, without evidence, that a general increase in energy and a slowing of the flow rate are known to be desirable. Thus, according to the Office, one

skilled in the art would optimize a method of emulsification by increasing the number of recirculations and reducing the flow rate.

As previously argued by Applicants and not addressed by the Office, the invention is based in part on the discovery that “[t]here seems to be a threshold flow rate below which there is little or no improvement in the stability of the pre-mixture. The gain in emulsion stability increases with the said linear flow rate[,]” (Specification, page 13, lines 2-4) and “below the threshold flow rate mentioned hereinabove, raising the number of re-circulation times does not help to improve the stability of the emulsion...” (Specification, page 13, lines 12-14). The present invention therefore employs a flow rate above a threshold level, which according to the Office’s position would result in lower energy and an undesirable outcome. Accordingly, the invention proceeds in a direction opposite that attributed to the prior art by the Office. The claims are thus not obvious, and the rejection should be withdrawn.

Rejections over Kornena and D’Agostino and Kornena and Southwick

For these rejections, the Office incorporated the previous grounds for rejection by reference. The Office did not, however, address Applicants arguments with respect to these rejections. In particular, the Examiner confirmed that the rejection of claims 42 - 48 does not rely on the teachings of GB ‘068.

As previously argued, claims 42 – 48 depend from and therefore include all limitations of claim 31. The Office has acknowledged that Kornena does not teach or suggest the limitations of claim 31, at paragraph 8 of the August 12, 2008 action. Furthermore, the Office does not allege that D’Agostino teaches or suggests any process for emulsification or that Southwick teaches or suggests the use of flow in emulsification. The combination of Kornena and D’Agostino or Southwick does not yield the present invention, as admitted by the Office. There is thus no basis for the present rejection, and it should be withdrawn.

Any purported teachings or suggestions of D’Agostino or Southwick on limitations of the dependent claims do not remedy this deficiency, and it is unnecessary to address the references further at this time. This basis of the rejection should also be withdrawn.

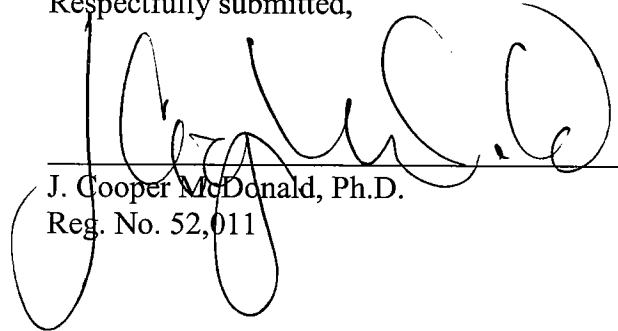
CONCLUSION

Applicants submit that the claims are in condition for allowance, and such action is respectfully requested. If there are any charges or any credits, please apply them to Deposit Account No. 03-2095.

Date:

June 30, 2009

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'J. Cooper McDonald', is written over a horizontal line.

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